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The Commonwealth of Massachusetts
Executive Office of Public Safety
Fire Safety Commission

Automatic Sprinkler Appeals Board

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MAURICE M. PILETTE
CHAIRMAN

PAUL DONGA
VICE CHAIR

Docket # 2005-75
65 Glendale Street
Easthampton, MA

AUTOMATIC SPRINKLER APPEALS BOARD
DECISION AND ORDER

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G1/2 and Chapter 6, section 201, relative to a determination of the Easthampton Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building operated by Glory Day's Restaurant owned by Michael E. Malinowski (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 65 Glendale Street, Easthampton, MA.

B) Procedural History

By written notice dated June 15, 2005, the Easthampton Fire Department issued an Order of Notice to the Appellant informing him about the provisions of a new law, M.G.L c. 148, s.26G1/2, which requires the installation of an adequate system of automatic sprinklers in certain buildings or structures. The building subject to the order is located at 65 Glendale Street, Easthampton, MA. The Appellant filed an appeal of said order on July 20, 2005. The Board held a hearing relative to this appeal on February 8, 2006, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was Michael Malinowski, owner of Glory Day's Restaurant. Captain John E. Phillips appeared on behalf of the Easthampton Fire Department and Richard Olexsak appeared on behalf of the Easthampton Building Department.

Present for the Board were: Maurice M. Pilette, Chairperson, Paul Donga, Vice Chair, Alexander MacLeod, Peter E. Gibbons, and John J. Mahan. Peter A. Senopoulos, Esquire, was the Legal Counsel for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the enforcement action of the Easthampton Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G1/2?

D) Evidence Received

1. Application for Appeal by Appellant
2. Order of Easthampton Fire Department
3. Letter from Appellant to Fire Chief
4. Letter from Fire Chief to Appellant
5. Certificate of Inspection dated October 18, 2004
6. Letter from Finck & Perras Insurance Agency Re: Restaurant Classification
7. Drawing of Restaurant
8. Notice of Hearing to Appellant
9. Notice of Hearing to Easthampton Fire Department
10. Easthampton Fire Department Package (pgs. 1-13)

E) Subsidiary Findings of Fact

- 1) By notice dated April 20, 2005 and delivered on June 15, 2005, the Easthampton Fire Department issued an Order to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 65 Glendale Street, Easthampton, in accordance with the provisions of M.G.L. c. 148, s.26G. This building is used by an establishment that operates under the name of Glory Day's Restaurant, a private, for profit organization.
- 2) According to a Certificate of Inspection issued on 10-18-04, the building department indicated a separate occupancy load for the bar area and dining area. The capacity of the main dining room was 85 persons and the bar area had a capacity of 40 persons. However, the current Certificate of Inspection, issued on 11-27-05, indicated a capacity of 125 persons throughout the facility and does not list separate capacity limits for the bar area and dining room. Said Certificate of Inspection indicates the use group of this building as "A-3". The building official indicated that the separate capacity listed on the 2004 certificate was based upon the number of seats in each area: 40 in the bar and 85 in the restaurant area. He said that he assumes that the capacity of the bar area probably remains at 40 persons, although it is not listed on the certificate. The owner and operator of the establishment indicated that he does not allow the capacity to exceed 40 persons in the bar area, notwithstanding the apparent lack of a separate capacity listed on the latest certificate. He further indicated that the dining area is closed off when the restaurant/food service is terminated and that the management does not allow persons or activities from the bar to overflow into the closed-off restaurant area.
- 3) The Appellant contends that the establishment is principally used, advertised and held out as a restaurant and is therefore exempt from the sprinkler provisions of M.G.L. c.148, s.26G1/2. He submitted a one page letter from Finck & Perras Insurance Agency which indicated that the classification of the business is a family restaurant and that the "percentage of liquor sales compared to food sales is 75% food and 25% liquor".

- 4) The establishment serves full meals on a daily basis. The “bar area” is also used for restaurant seating. However, a customer can patronize this area for the purchase of liquor only. Any overflow of activities and occupancy of the bar area may be prevented from expanding into the dining area, since these two areas are separated by a wall with French doors.
- 5) The restaurant features karaoke entertainment in the bar area on Thursday nights.
- 6) Full meals are routinely served in the “bar” area while meals are being served in the dining area. The restaurant portion is open daily from 11 a.m. to 10 p.m. The lounge area is usually open from 11:00 a.m. until approximately 12:00 midnight, particularly on Friday and Saturday nights. The establishment holds a full liquor license which allows liquor to be legally sold until 2:00 a.m.
- 7) The fire department issued the Order to install sprinklers based upon the overall building capacity, the existence of liquor sales and the existence of a bar area. The representative of the fire department did not contest the characteristics of the building, including its use and description as presented by the Appellant. Said representative indicated that this establishment has not had a history of incidents involving overcrowding.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of the 2d paragraph of M.G.L. c. 148, s. 26G1/2, in pertinent part, states: “every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code”. The law was effective as of November 15, 2004. Under the provisions of the new law (St. 2004, c.304, s.11) an owner is required to submit plans and specifications for the installation of such sprinklers within 18 months of the effective date of the act (May 15, 2006) and is required to complete the mandated sprinkler installation by November 15, 2007.
- 2) This establishment has characteristics that are typical of a restaurant. It clearly appears that the service of food is the primary customer attraction in all portions of the building during most times of operation. The sprinkler requirements of s. 26G1/2 specifically do not apply to a place of assembly within a building or structure or portions thereof used “principally as a restaurant”. Such restaurant establishments feature meals as the main or principal customer attraction. However, it appears that this particular establishment also features a portion of the building that could be considered a “bar” or lounge area designed or used on a regular basis to serve alcoholic beverages to customers beyond the hours of restaurant operation. This establishment also routinely and regularly features a karaoke entertainer in this “bar” area on a weekly basis. Establishments, that feature some combined characteristics of a restaurant and a bar are fairly common throughout the Commonwealth, and present unique challenges in implementing the provisions of section 26G1/2.

- 3) In an attempt to interpret the legislative intent of this law as applied to such establishments, the board will look to the plain language of the statute in rendering a determination. The Board notes that section 26G1/2, in pertinent part, requires the installation of an adequate system of automatic sprinklers in: “Every ... building or structure ...or **portions thereof**, of public assembly **with a capacity of 100 persons or more** that is designed or used for occupancy as a ...nightclub, dancehall discotheque, **bar or similar entertainment purposes...**” (emphasis added). In determining whether the sprinkler requirement will apply in this case and other similar cases that involve a building which features a combination of characteristics, the legislature’s use of the words “portions thereof” in describing the areas of the building subject to the sprinkler installation is significant. This language clearly requires an analysis of the building’s characteristics and floor plan to determine if a reasonable apportionment or separation exists between that portion of the building used or designed for bar or entertainment purposes and the other portion of the building not subject to the law. In determining if a sprinkler system is required in such “combination” establishments the Board will review the following characteristic:
- a. Is that portion of the building used or designed for bar or entertainment purposes reasonably apportioned and separate from the other areas of the building? In determining this question there must be:
 - 1. A sufficient **physical** separation that exists between the entertainment or bar portion from the rest of the building which prevents the occupants or activities of the bar to expand into the dining area. Such separation can include a permanent wall or closed door.
 - 2. Additionally, there must be a separation in an **operational** or business context that exists which assures that the activities that occur in the bar or entertainment area do not overflow or expand into the restaurant or other areas when such areas are no longer in operation.
 - b. If the separation exists, as described the question above, does that portion used or designed for bar or entertainment purposes legally exceed a capacity of 100 persons or more?
- 4) The above analysis, applied to this particular establishment, indicates the existence of a physical separation between the “lounge” or bar area and the rest of the building which prevents the bar activities from expanding into the dining area. This separation includes a permanent wall with French doors that are capable of closing. The bar area also has a separate and independent means of egress. Additionally, there was testimony that a separation in an operational and business context exists which assures that the activities that occur in the bar area do not overflow or expand into the restaurant or other areas when they are shut down.
- 5) The portion of the building used as a bar featuring karaoke entertainment had a capacity of 40 persons, as indicated in the October 2004 certificate of inspection. Based upon the testimony of the building owner and the building official, this capacity limitation is apparently still valid

although the current certificate does not breakdown the total maximum 125 occupancy load. This amount is less than the statutory capacity threshold of 100 persons or more, which would require the installation of sprinklers in this bar area.

- 6) The Board also notes that the provisions of M.G.L. c. 148, s.26G1/2 (4th paragraph) allows a building principally used as a restaurant to be used temporarily as a nightclub, dance hall, discotheque or bar, or similar entertainment purpose without the need to install a sprinkler system if a permit is issued by the head of the fire department in consultation with the building inspector who may set the terms and conditions to protect against fire and preserve public safety. Thus, Appellant may be allowed to temporarily use the entire establishment for a “nightclub” entertainment activity if a permit to do so is issued by the head of the fire department.

G) Decision and Order

As currently used, this establishment, as a whole, has the characteristics of a restaurant. Although a portion of this restaurant is also used as a “bar” which features a karaoke entertainer, this area is sufficiently capable of being apportioned and separated, both physically and operationally from the restaurant and other areas of this building. This portion of the building, used or designed as a bar and for entertainment purposes does not have a capacity of 100 persons or more. For the foregoing reasons, this Board **reverses** the Order of the Easthampton Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2.

This determination is contingent upon the continued use and operation of the establishment in a manner consistent with the findings herein. In particular, the owner and operator of the establishment shall assure that the activities and occupancy of the bar area do not overflow into the dining area when food is not being served. This shall be accomplished by maintaining the physical and operational separation, as discussed herein. The owner operator of the establishment shall continue to limit the capacity/occupancy of the bar area to not more than 40 persons.

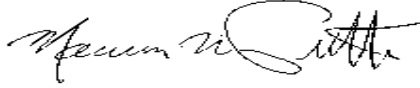
H) Vote of the Board

Maurice Pilette, (Chairperson)	In Favor
Paul Donga (Vice Chair)	In Favor
Alexander MacLeod	In Favor
Peter E. Gibbons	In Favor
John J. Mahan	In Favor

I) Right of Appeal

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,

A handwritten signature in cursive script, appearing to read "Maurice Pilette".

Maurice Pilette, P.E.. Chairman
Chairperson

Dated: April 12, 2006

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY 1st CLASS MAIL, POSTAGE PRE-PAID, TO: Michael Malinowski, Glory Day's Restaurant, 65 Glendale Street, Easthampton, MA 01027 **and to** Chief Kevin Croake, Easthampton Fire Department, 32 Payson Ave, Easthampton, MA 01027.